

BAHN, HERZFELD & MULTER, LLP
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Attorneys for Third-Party Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARVIN FRANK, Individually and on behalf :
of a Class, :

Plaintiff, :

-v- :

A & B RESTAURANT GROUP LLC, :

Defendant. :

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A & B RESTAURANT GROUP LLC, :

Third-Party Plaintiff, :

- v- :

RETAIL AUTOMATION PRODUCTS, INC., :

Third-Party Defendant. :

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Dkt. No. 07-CV-11419 (JSR)

**ANSWER TO
THIRD-PARTY COMPLAINT**

Third-Party Defendant RETAIL AUTOMATION PRODUCTS, INC. ("RAP"), by and through its attorneys, Bahn, Herzfeld & Multer, LLP, as and for its Answer to the Third-Party Complaint in this matter, states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 1 of the Third-Party Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 2 of the Third-Party Complaint.
3. Admits the allegation set forth in Paragraph 3 of the Third-Party Complaint, except states that its principal place of business is located at 45 West 38th Street, Suite 203, New York, New York, and not “45 West 38th Street, Suite 203 1410 York Avenue” [*sic*], as set forth therein.
4. In response to Paragraph 4 of the Third-Party Complaint, repeats, realleges, and incorporates by reference its responses to Paragraphs 1 through 3 of the Third-Party Complaint, inclusive, as if fully set forth herein.
5. An affirmative response is not required to the allegations set forth in Paragraph 5 of the Third-Party Complaint, which merely purport to state the legal basis of the underlying action. To the extent that any response is required, admits that Plaintiff purports to proceed as set forth therein.
6. Paragraph 6 of the Third-Party Complaint states that the Court has jurisdiction over the underlying action “pursuant to 29 U.S.C. §1331. (emphasis added)” Third-Party Defendant assumes that this is a typographical error, and that Third-Party Plaintiff intended to invoke the federal question jurisdiction set forth in 28 U.S.C. §1331; based upon that assumption, admits the allegation set forth therein.
7. Admits the allegations set forth in Paragraph 7 of the Third-Party Complaint.
8. Admits the allegation set forth in Paragraph 8 of the Third-Party Complaint.
9. Admits the allegation set forth in Paragraph 9 of the Third-Party Complaint.
10. Denies the factual allegations set forth in Paragraph 10 of the Third-Party Complaint, but admits that Third-Party Plaintiff purports to proceed as set forth therein.

11. In response to Paragraph 11 of the Third-Party Complaint, repeats, realleges, and incorporates by reference its responses to Paragraphs 1 through 10 of the Third-Party Complaint, inclusive, as if fully set forth herein.
12. Admits the allegations set forth in Paragraph 12 of the Third-Party Complaint.
13. Admits the allegations set forth in Paragraph 13 of the Third-Party Complaint.
14. Denies the allegations set forth in Paragraph 14 of the Third-Party Complaint.
15. Denies the allegations set forth in Paragraph 15 of the Third-Party Complaint.
16. Denies the allegations set forth in Paragraph 16 of the Third-Party Complaint.
17. Denies the allegations set forth in Paragraph 17 of the Third-Party Complaint.
18. In response to Paragraph 18 of the Third-Party Complaint, repeats, realleges, and incorporates by reference its responses to Paragraphs 1 through 17 of the Third-Party Complaint, inclusive, as if fully set forth herein.
19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Third-Party Complaint.
20. Denies the allegations set forth in Paragraph 20 of the Third-Party Complaint.
21. Denies the allegations set forth in Paragraph 21 of the Third-Party Complaint.
22. In response to Paragraph 22 of the Third-Party Complaint, repeats, realleges, and incorporates by reference its responses to Paragraphs 1 through 21 of the Third-Party Complaint, inclusive, as if fully set forth herein.
23. Denies the allegations set forth in Paragraph 23 of the Third-Party Complaint.
24. In response to Paragraph 24 of the Third-Party Complaint, repeats, realleges, and incorporates by reference its responses to Paragraphs 1 through 23 of the Third-Party Complaint, inclusive, as if fully set forth herein.

- 25. Denies the allegations set forth in Paragraph 25 of the Third-Party Complaint.
- 26. Denies the allegations set forth in Paragraph 26 of the Third-Party Complaint.
- 27. Denies the allegations set forth in Paragraph 27 of the Third-Party Complaint.
- 28. Denies the allegations set forth in Paragraph 28 of the Third-Party Complaint.
- 29. Denies the allegations set forth in Paragraph 29 of the Third-Party Complaint.
- 30. Denies the allegations set forth in Paragraph 30 of the Third-Party Complaint.
- 31. Denies the allegations set forth in Paragraph 31 of the Third-Party Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- 32. Third-Party Plaintiff fails to state a cause of action that can be maintained against Third-Party Defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- 33. Any damages allegedly sustained by Third-Party Plaintiff were the result of acts and/or conditions by Third-Party Plaintiff, none of which were under the control of the Defendant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

- 34. The Third-Party Complaint is barred by the doctrines of waiver and/or unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

- 35. Third-Party Defendant acted reasonably and with due care at all times, and in good faith and without malice.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. The Third-Party Complaint fails to plead fraud with sufficient specificity.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

37. The underlying action cannot be maintained as a result of the enactment of legislation that eliminated the cause of action under which Plaintiffs purported to proceed in the Amended Complaint. President Bush signed that legislation (Public Law No. 110-241), the Credit and Debit Card Receipt Clarification Act of 2008, on or about June 3, 2008. Accordingly, the underlying Amended Complaint fails to state a cause of action against Defendant/Third-Party Plaintiff, and there can be no basis for the Third-Party Complaint.

DEMAND FOR JUDGMENT

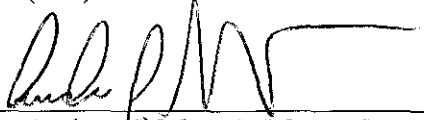
WHEREFORE, Third-Party Defendant Retail Automation Products, Inc., requests the following relief against the Third-Party Plaintiff, A & B Restaurant Group LLC:

- A. Judgment in favor of RAP and against A & B, together with costs, including reasonable attorneys' fees;
- B. Dismissal of the Third-Party Complaint;
- C. Dismissal of the underlying Amended Complaint (relief sought as to Plaintiff); and

D. For such further and additional relief as the Court deems just and proper

DATED: New York, New York
July 2, 2008

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